

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

GARY WAYNE STRICKLAND,  
TDCJ #1221143,

Plaintiff,

v.

NATHANIEL QUARTERMAN, *et al.*,

Defendants.

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CIVIL ACTION NO. H-07-0506

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**ORDER**

State inmate Gary Wayne Strickland has filed a civil rights complaint under 42 U.S.C. § 1983 and a memorandum in support of his claims. Citing the defendants' apparent failure to file an answer or responsive pleading, Strickland has filed a motion for summary judgment by default. (Doc. # 10). The motion is denied for reasons set forth briefly below.

The Court issued an order on April 6, 2007, requesting an answer from the defendants. (Doc. # 8). The Court recently issued an amended order to answer after it became evident from the record that the defendants did not receive the one issued previously. (Doc. # 9). Because the defendants' answer is not yet due, there has been no default.


Strickland has filed objections to the Court's amended order, which effectively extends the time to answer. (Doc. # 12). Those objections are overruled. Importantly, courts in this circuit follow a policy that favors resolving cases on the merits and against the use of default judgments. *See, e.g., Lindsey v. Prive Corp.*, 161 F.3d 886, 892-93 (5th Cir. 1998); *Sun Bank of Ocala v. Pelican Homestead & Sav. Ass'n*, 874 F.2d 274, 276 (5th Cir.

1989). Thus, it is well established that “[a] party is not entitled to a default judgment as a matter of right, even where the defendant is technically in default.” *Ganther v. Ingle*, 75 F.3d 207, 212 (5th Cir. 1996) (citing *Mason v. Lister*, 562 F.2d 343, 345 (5th Cir. 1977)).

The defendants in this case are not in default. Accordingly, it is **ORDERED** that the plaintiff’s motion for summary judgment by default (Doc. # 10) is **DENIED**.

The Clerk shall provide a copy of this order to the parties.

SIGNED at Houston, Texas, on June 19, 2007.

  
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Nancy F. Atlas  
United States District Judge